

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

DAVID McBROOM,

3:12-CV-00589-HU

Plaintiff,

ORDER

v.

CITY OF GRESHAM and
AARON TURNAGE,

Defendants.

LEONARD RANDOLPH BERMAN
Law Office of Leonard R. Berman
4711 S.W. Huber Street
Suite E-3
Portland, OR 97219
(503) 516-3715

Attorneys for Plaintiff

DAVID C. LEWIS
ROBERT S. WAGNER
Miller & Wagner, LLP
2210 N.W. Flanders Street
Portland, OR 97210
(503) 299-6116

Attorneys for Defendant

BROWN, Judge.

Magistrate Judge Dennis J. Hubel issued Findings and
Recommendation (F&R)(#28) on August 15, 2013, in which he

recommends this Court grant in part and deny in part Plaintiff David McBroom's Motion (#17) for Partial Summary Judgment.

On September 4, 2013, this Court granted Plaintiff's Unopposed Motion (#30) to File Objection to the Findings and Recommendation. Plaintiff filed timely Objections to the Findings and Recommendation on September 17, 2013. This matter is now before this Court pursuant to 28 U.S.C. § 636(b)(1) and Federal Rule of Civil Procedure 72(b).

**PORTIONS OF THE FINDINGS AND RECOMMENDATION
TO WHICH THERE ARE NO OBJECTIONS**

Neither party objects to the Magistrate Judge's Findings and Recommendation that this Court grant Plaintiff's Motion (#17) for Partial Summary Judgment as to Defendant Aaron Turnage's qualified immunity defense and deny Plaintiff's Motion as to Plaintiff's negligence claim against Defendant the City of Gresham.

The Court, therefore, is relieved of its obligation to review the record *de novo* as to these portions of the Findings and Recommendation. See *Shiny Rock Min. Corp v. U.S.*, 825 F.2d 216, 218. (9th Cir. 1987). See also *Lorin Corp. v. Goto & Co.*, 700 F.2d 1202, 1206 (8th Cir. 1983). Having reviewed the legal principles *de novo*, the Court does not find any error in these portions of the Findings and Recommendation.

**PORTIONS OF THE FINDINGS AND RECOMMENDATION
TO WHICH PLAINTIFF OBJECTS**

When any party objects to any portion of the Magistrate Judge's Findings and Recommendation, the district court must make a *de novo* determination of that portion of the Magistrate Judge's report. 28 U.S.C. § 636(b)(1). See also *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003)(*en banc*); *United States v. Bernhardt*, 840 F.2d 1441, 1444 (9th Cir. 1988).

Plaintiff objects to the portion of the Findings and Recommendation regarding Plaintiff's claim against Defendant Turnage under 42 U.S.C. § 1983 in which the Magistrate Judge finds the facts, viewed in the light most favorable to Defendant Turnage, "demonstrate the presence of numerous issues of genuine, material fact that preclude summary judgment." F&R at 6. Plaintiff specifically contends there is not a genuine dispute of material fact as to whether Defendant Turnage had a reasonable suspicion to justify his pat-down and search of Plaintiff. In his Objections Plaintiff essentially reiterates the arguments contained in his Memorandum (#18) in support of his Motion for Partial Summary Judgment.

his Court has carefully considered Plaintiff's Objections and concludes they do not provide a basis to modify the Findings and Recommendation. The Court also has reviewed the pertinent portions of the record *de novo* and does not find any error in the

Magistrate Judge's Findings and Recommendation.

CONCLUSION

The Court **ADOPTS** Magistrate Judge Hubel's Findings and Recommendation (#28) and, therefore, **GRANTS in part** and **DENIES in part** Plaintiff's Motion (#17) for Partial Summary Judgment as follows:

1. The Court **GRANTS** Plaintiff's Motion for Partial Summary Judgment as to Defendant Turnage's qualified immunity defense.
2. The Court **DENIES** Plaintiff's Motion for Summary Judgment in all other respects.

IT IS SO ORDERED.

DATED this 22nd day of November, 2013.

/s/ Anna J. Brown

ANNA J. BROWN
United States District Judge